

AG Contract No.: KR03-1191TRN
ADOT ECS File No.: JPA 02-129
Project No.: TEA-GLN-0(17)A
Project: Historic Catlin Court Alleyways
TRACS No.: SL462 01C
Budget Source Item No.: N/A

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF GLENDALE

THIS AGREEMENT is entered into 25th January, 2005, pursuant to Arizona Revised Statutes § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and CITY OF GLENDALE, ARIZONA, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.
3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of transportation enhancement activities
4. Such project lies within the boundary of the City has been selected by the City; the field survey of the project has been completed; and the design plans, estimates and specifications have been prepared and, as required, submitted to the State and Federal Highway Administration (FHWA) for their approval
5. The City, in order to obtain federal funds for the construction of the project, is willing to provide City funds to match federal funds in the ratio required or as finally fixed and determined by the City, State and FHWA, including actual construction engineering and administration costs (CE).
6. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

NO. 27338

Filed with the Secretary of State

Date Filed: 01/25/05

Janice K. Brewer
Secretary of State

By: Vicky D. Graemevald

7. The work encompassed in this Agreement is for the improvement of Historic Catlin Court Alleyways, hereinafter referred to as the "Project". The Project includes design and construction of Historic District from 57th Ave. to 59th Ave. Alleyways. The City will be responsible for design, bidding, construction administration, maintenance, electrical power, water connections and landscape maintenance to the Project. The estimated costs are as follows:

Design:

Estimated Design Cost	\$ 50,000.00
Federal-aid funds @ 0%	\$ 0.00
City of Glendale @ 100%	\$ 50,000.00

Construction - TRACS No.: SL462 01C

Estimated Construction Cost (includes 15% CE cost)	\$ 1,004,714.00
Federal-aid funds @94.3% (capped)	\$ 500,000.00
City funds @5.7%	\$ 30,223.00
Estimated City of Glendale @100%	\$ 474,491.00
Estimated Total City of Glendale	\$ 504,714.00

Total CITY OF GLENDALE Funds for Design and Construction	\$ 554,714.00
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THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Agree to be the City's authorized agent for the Project and submit a program containing the aforementioned Project to FHWA with the recommendation that it be approved for construction and funding. Should costs exceed the maximum federal funds available, it is understood and agreed that the City will be responsible for any overage.

b. Approve the Project if such project construction funds are available by FHWA for construction of the Project. The State and FHWA hereby designated the City to self-administer the Project.

c. Upon execution of this Agreement, make payments to the City up to a maximum not to exceed the federal aid funds shown for the direct actual cost of the construction of the Project, plus construction engineering, after receipt and approval of a reimbursement request.

d. Not be obligated to maintain said Project, should the City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

2. The City will:

a. With the aid and consent of the FHWA and the State using Arizona Procurement Procedures, proceed to design, advertise for, receive and open bids, subject to the concurrence of FHWA and the State. Enter into contract(s) with a firm(s) to whom the award is made for the construction of the Project. The Project will be performed, completed, accepted and paid for in accordance with the requirements of the Project Plans, Special Provisions and Standard Specifications at the lowest responsible bid price.

b. Provide personnel to administer and supervise construction. All construction Project change orders are to be copied to the State. The FHWA will participate in the construction administration cost provided by the City up to 18 percent (18%) of the cost of construction. Construction administration costs not participated in by FHWA shall be borne by the City.

c. Acquire any necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired prior to advertisement for bids and shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the project area, and hereby certifies that all obstructions and encroachments have been or will be removed there from, prior to the start of construction.

d. Not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use.

e. Should unforeseen conditions or circumstances increase the cost of said Project such that a change in the extent or scope of work called for in this Agreement become necessary, the City shall be obligated to incur and pay for said increased costs.

f. Consent to any inspections performed by the State, provide records or audit any books of the City in order for the State to assure itself that the monies on the Project have been spent and the Project completed in accordance with the plans and specifications, statutes, rules and regulations of the State and federal government.

g. Shall furnish all water for landscape installation during the construction phase, a point of connection (POC) for the irrigation system, and all water thereafter necessary to properly maintain the landscape, all at City expense.

h. Allow free public access to the Project improvements

i. Provide electrical power, water connections and landscape maintenance during and after the construction phase, all at the City's expense.

j. Upon completion of the Project, shall provide for, at its own cost and as an annual item in its budget, perpetual and proper maintenance to the Project, including but not limited to:

- Electrical power
- Water
- Maintaining healthy landscape plantings
- Eradication of weeds
- Operation and cost of irrigation
- Operation and cost of lighting
- Maintaining safe access to pedestrian facilities and bicycle facilities

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, nor for any resulting construction project. The City, in regard to the City's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. The City shall require its contractors to name the State and ADOT as an additional insured in the contractor's insurance policies. The City shall also require its contractors to name the State and ADOT as an additional indemnitee in the City's contracts with its contractors. It is understood and agreed that the State's

participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this Agreement is to be borne by FHWA and City, each in the proportion prescribed or as fixed and determined by the FHWA as stipulated in this Agreement. Therefore, City agrees to furnish and provide the difference between the total cost of the works provided for in this Agreement and the amount of federal aid received.

3. The terms and conditions and provisions of this Agreement shall remain in full force and effect until completion of the said Project, except any provisions for electrical power, water and maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be cancelled at any time prior to the award of the Project construction contract, upon sixty (60) days written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the City, the State shall in no way be obligated to maintain the said Project.

4. This Agreement shall become effective upon filing with the Secretary of State.

5. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

6. The provisions of Arizona Revised Statutes § 35-214 pertaining to the State audit are applicable to this contract. In the event of such an audit, the City will bear all costs associated therewith.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds. Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

For Contracts:

Arizona Department of Transportation
Joint Project Administration
205 S. 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
FAX: (602) 712 7424

City of Glendale
City Manager
5850 W. Glendale Ave.
Glendale, AZ 85301
FAX: (623) 915 2861

For Project Manager:

Arizona Department of Transportation
Transportation Enhancement/Scenic Roads Section
205 S. 17th Avenue, Mail Drop 609E
Phoenix, AZ 85007

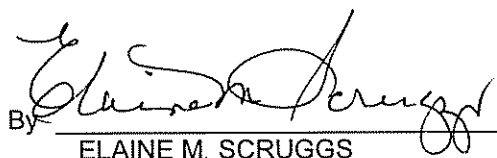
11. Pursuant to Arizona Revised Statutes § 11-952, (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF GLENDALE

STATE OF ARIZONA

Department of Transportation

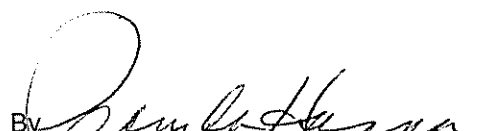
By 

ELAINE M. SCRUGGS
Mayor

By 

SUSAN TELLEZ
Contract Administrator

ATTEST

By 

PAMELA HANNA
City Clerk

RESOLUTION NO. 3811 NEW SERIES

A RESOLUTION OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING AND DIRECTING THE ENTERING INTO OF AN INTERGOVERNMENTAL AGREEMENT AND MEMORANDUM OF AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR THE CATLIN COURT ALLEYWAYS IMPROVEMENTS.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

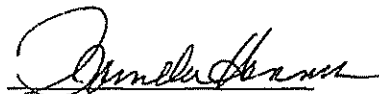
SECTION 1. That it is deemed in the best interest of the City of Glendale and the citizens thereof that the Intergovernmental Agreement and Memorandum of Agreement with the Arizona Department of Transportation for the Catlin Court alleyways improvements be entered into, which agreements are now on file in the office of the City Clerk of the City of Glendale.

SECTION 2. That the Mayor or City Manager and the City Clerk be authorized and directed to execute and deliver said agreements on behalf of the City of Glendale.

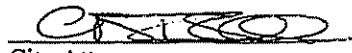
PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this 14th day of December, 2004.


MAYOR

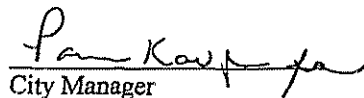
ATTEST:


City Clerk (SEAL)

APPROVED AS TO FORM:


City Attorney

REVIEWED BY:


City Manager

APPROVAL OF THE CITY OF GLENDALE ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF GLENDALE, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 14th day of December, 2004.

A handwritten signature in black ink, appearing to be 'C. S. O.', written over a horizontal line.

City Attorney



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

TRANSPORTATION SECTION
WRITER'S DIRECT NO: 602.542.8837

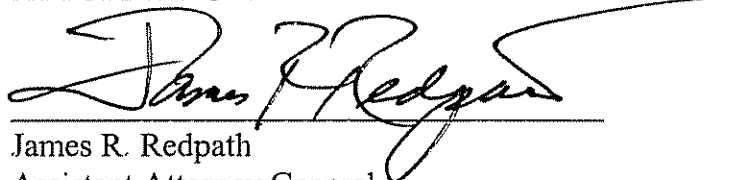
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR03-1191-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 18 January 2005

Terry Goddard
ATTORNEY GENERAL


James R. Redpath
Assistant Attorney General
Transportation Section

JRR:djd:780214